

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

JANE DOE as next friend for “FIONA,” a minor,
“ERIN,” “VICKY,”
JANE ROE as next friend for
“SKYLAR” and “SAVANNAH,” minors,
JOHN DOE as next friend for “SALLY”
and “SIERRA,” minors, and “SARAH”

Civ. No. 16-cv-00303-DSC

**PETITION TO APPROVE
MINOR PLAINTIFF FIONA’S
SETTLEMENT AND ENTER AN
ORDER OF DISMISSAL**

Plaintiffs,

v.

KIRK NESSET,

Defendant.

STATEMENT OF RELIEF REQUESTED

Jane Doe, on behalf of the minor Plaintiff Fiona, petitions this court to approve the settlement of her claims and enter an order of dismissal. Plaintiff Fiona is a minor [REDACTED] and requests the Court conduct an inquiry to determine whether the settlement negotiated by her next friend and counsel serves her best interests and is reasonable in light of the facts and specific claims at issue in this case.

FACTS

On April 27, 2018, counsel for both parties participated in a session with mediator Judge Kenneth Benson. [REDACTED]

[REDACTED] Skylar, Savannah, Sally, and Sierra are minors and have undertaken infant compromise and/or guardianship proceedings which allow Jane Roe and John Doe to settle their civil claims.

Plaintiff Fiona has the only unresolved claim in this case. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SETTLEMENT FOR MINOR PLAINTIFF

Western District of Pennsylvania Local Rule of Civil Procedure [LCvR] 17.1(A) requires court approval for the settlement of a minor's claims. LCvR 17.1(B) requires the minor's attorney to file a petition containing "(1) a statement of the nature of the evidence relied on to show liability, (2) the elements of damages, (3) a statement of the services rendered by counsel, (4) the expenses incurred or to be incurred and (5) the amount of fees requested." LCvR 17.1(C) provides "...If the minor has no guardian of his or her estate and the balance does not exceed ten thousand dollars (\$10,000.00), the Court on its own motion or upon petition of any person entitled to apply for the appointment of a guardian for the minor may authorize the amount of the judgment to be paid to the guardian of the person, the natural guardian, the person by who the minor is maintained, or the minor."

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EVIDENCE RELIED UPON

On October 1, 2014, FBI Special Agent Jason Crouse and other law enforcement agents with the FBI and Pennsylvania State Police executed a federal search warrant and seized the Defendant's computer equipment. Docket Document 1 filed 12/19/16 ¶64. During the execution of the search warrant, Defendant waived his Miranda rights and agreed to be interviewed. *Id.* at ¶69. During the interview, Defendant admitted to downloading child pornography from the Internet. *Id.* at ¶70. Child Identification Program (CVIP) analysts at the National Center for Missing and Exploited Children (NCMEC) matched the child pornography images on the Defendant's computer to child pornography images of Plaintiffs Erin, Fiona, Vicky, Skylar, Savannah, Sally, Sierra, and Sarah in NCMEC's database and notified the government of its findings in a CVIP report. *Id.* at ¶75. On June 18, 2015, Fiona was notified in a letter from the Department of Justice United States Attorney's Office for the Western District of Pennsylvania that the Defendant possessed her child sex abuse images. *Id.* at ¶78. On February 8, 2016

Defendant was sentenced to 76 months of imprisonment and required to pay \$78,000 in restitution for his child pornography crimes. *Id.* at ¶82.

ELEMENTS OF DAMAGES

Exhibit A is a psychological report detailing Fiona's losses as a result of child pornography crimes.

I. Services Rendered by Counsel

See the Declaration of James R. Marsh.

II. Expenses Incurred or to be Incurred

See the Declaration of James R. Marsh.

III. Amount of Fees Requested

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE PROPOSED SETTLEMENT AGREEMENT WAS NEGOTIATED IN GOOD FAITH, IS FAIR AND REASONABLE, AND IN FIONA'S BEST INTEREST

The proposed settlement agreement was negotiated in good faith, is fair and reasonable in light of the facts and specific claim and serves the best interest of Plaintiff Fiona. Exhibit B.

There are eight plaintiffs in this case. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONCLUSION

For all the above reasons, Plaintiff Fiona respectfully requests that the Court:

1. find the settlement negotiated by Jane Doe as next friend for minor Plaintiff Fiona serves Fiona's best interest and is reasonable in light of the facts and specific claims at issue and recoveries in similar cases;
2. approve the settlement;
3. approve the legal fees and expenses;
4. order the balance of the settlement proceeds be distributed to Fiona's next friend, Jane Doe, and used solely for Fiona's care and support;
5. enter an order dismissing the matter with prejudice.

Dated this 17th day of October, 2018.

Verified Affidavit

I, Katie M. Shipp, herby state that the facts above set forth are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

MARSH LAW FIRM PLLC

by  _____
Katie M. Shipp
Box 4668 #65135
New York, New York 10163-4668
Telephone: 212-372-3030
Fax: 833-210-3336
Email: katieshipp@marsh.law
Attorney for Plaintiffs Jane Doe, Erin, and Fiona

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KIRK NESSET,

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ORDER

UPON CONSIDERATION of the Petition to Approve Minor Plaintiff Fiona’s Settlement and Enter an Order of Dismissal, the Declaration of James R. Marsh in support thereof, and the Declaration of Jane Doe in support thereof;

IT IS HEREBY ORDERD AND DECREED that Jane Doe as the parent, guardian ad litem, and next friend of “Fiona,” a minor plaintiff in this action, is authorized to enter into a settlement with the Defendant, Kirk Nessel, in the gross sum of [REDACTED]. The Defendant shall forward all settlement drafts or checks to Jane Doe’s counsel at the Marsh Law Firm PLLC for proper distribution.

IT IS FURTHER ORDERED AND DECREED that reasonable counsel fees of [REDACTED] and expenses of [REDACTED] shall be distributed to the Marsh Law Firm PLLC;

IT IS FURTHER ORDERD AND DECREED that the balance of the settlement proceeds, in the amount of [REDACTED], shall be distributed to Jane Doe as the parent, guardian ad litem, and next friend of “Fiona,” a minor plaintiff in this action, to be expended for Fiona’s care and support at the sole discretion of Jane Doe.

This case is hereby dismissed with prejudice.

This _____ day of October 2018.

Honorable Susan Paradise Baxter
United States District Judge